

In the Matter of:)
)
Application for Certification) Docket No.
for the GWF Tracy Combined) 08-AFC-7
Cycle Power Plant Project)
_____)

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Karen Douglas, Chairman, Presiding Member

HEARING OFFICER, ADVISORS PRESENT

Raoul Renaud, Hearing Officer

Devorah Eden, Advisor to Commissioner Rosenfeld

Galen Lemei, Advisor to Chairman Douglas

STAFF AND CONSULTANTS PRESENT

Kerry A. Willis, Senior Staff Counsel

Brewster Birdsall

Matthew Layton

Marie McLean

Maggie Read

Alan Solomon

APPLICANT

Michael Carroll, Attorney
Latham & Watkins

Doug Wheeler
GWF Power Systems

Jerry Salamy
CH2MHILL

INTERVENORS

Annette Tusó Elissagaray

Charles Tusó

ALSO PRESENT

Jim Swaney, San Joaquin Valley Air Pollution
Control District (via telephone)

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1 P R O C E E D I N G S

2 2:06 p.m.

3 HEARING OFFICER RENAUD: Good afternoon
4 everybody. My name is Raoul Renaud. I'm the
5 Energy Commission Hearing Advisor assigned to the
6 Tracy, GWF Tracy Combined Cycle Power Plant
7 Project.

8 And we're here today for the prehearing
9 conference which was noticed on November 2, 2009.
10 We've also noticed the Evidentiary Hearing to take
11 place on November 30, 2009 in Tracy.

12 Before we go any further let's make
13 introductions here. I will introduce the people
14 up here.

15 To my far right is Kourtney Vaccaro who
16 is a new hearing advisor with us and is here to
17 learn from my mistakes (laughter).

18 To her left is Galen Lemei who is
19 advisor to Chairman Karen Douglas. To my
20 immediate right is Chairman Karen Douglas.

21 And to my left is Devorah Eden who is
22 advisor to Commissioner Rosenfeld who is the
23 Associate Member of the Committee assigned to hear
24 this matter. Commissioner Rosenfeld cannot be
25 present today.

1 Let me take introductions from the
2 representatives of the applicant first, please.

3 MR. CARROLL: Good afternoon, Mike
4 Carroll with Latham and Watkins on behalf of the
5 applicant.

6 To my right is Doug Wheeler with GWF
7 Energy, the applicant in these proceedings.

8 And we have with us other
9 representatives of the applicant including from
10 GWF, Latham and Watkins and CH2MHILL.

11 HEARING OFFICER RENAUD: Thank you. And
12 for the staff.

13 MS. WILLIS: Good afternoon. My name is
14 Kerry Willis, Senior Staff Counsel. And with me
15 is Alan Solomon, Project Manager.

16 We also have in the audience Beverly
17 Bastian and Marie McLean if there are any
18 questions on cultural or visual resources.

19 HEARING OFFICER RENAUD: Okay, thank you
20 very much.

21 This proceeding is being recorded today
22 and it will be transcribed into a written
23 transcript which will be available for view on the
24 Commission website.

25 We also have a telephone line open which

1 was set forth in the notice. It's a toll free
2 line for anybody who wants to listen in or
3 participate. Do we have anyone on the line yet?

4 MS. READ: Operator?

5 OPERATOR: Yes.

6 MS. READ: We have only one person, Jim
7 Swaney, right?

8 OPERATOR: Correct.

9 MS. READ: Okay.

10 HEARING OFFICER RENAUD: So who do we
11 have on the line?

12 MS. READ: There's a Mr. Jim Swaney and
13 he wants to speak on air quality when that topic
14 comes up.

15 HEARING OFFICER RENAUD: All right. Jim
16 Swaney to speak on air quality. Thank you.

17 MS. READ: And who is he representing?

18 HEARING OFFICER RENAUD: He's with the
19 Air District as I understand. All right, good.

20 MS. READ: Okay. Thank you. San
21 Joaquin Air Pollution.

22 HEARING OFFICER RENAUD: San Joaquin Air
23 District.

24 MS. READ: Air District.

25 HEARING OFFICER RENAUD: Thank you. All

1 right, good.

2 The purpose of this prehearing
3 conference is to ascertain the readiness of the
4 parties to proceed to evidentiary hearing, roughly
5 two weeks from today.

6 The Evidentiary Hearing is the time when
7 the Committee takes formal evidence and testimony
8 into the record and thereby creating the
9 evidentiary record upon which the Presiding
10 Member's Proposed Decision and the Final
11 Commission Decision can be based.

12 What we want to do here today is find
13 out from the parties whether they're ready to go
14 on November 30th, whether there are any areas in
15 which the staff and the applicant are not in
16 agreement, and to find out the nature of any such
17 disagreements and whether those would affect
18 readiness to go on November 30th.

19 In preparation for this hearing we asked
20 the parties, and that includes the staff, the
21 applicant and any intervenors, to file prehearing
22 conference statements.

23 In this case we have two intervenors.
24 The Tusos and the Elissagarays, represented by
25 Mr. Seligman, counsel.

1 And we have also Robert Sarvey.

2 Neither of them filed a prehearing
3 conference statement. And I assume from that they
4 do not intend to offer any evidence into the
5 record or testimony and do not intend to cross
6 examine any witnesses.

7 We expect parties who wish to do those
8 things to provide prehearing conference statements
9 in fairness to each of the other parties so that
10 everyone will know in advance exactly what
11 evidence and testimony the, each party intends to
12 offer.

13 The prehearing conference I did receive
14 from the staff and the applicant were filed on
15 time, November 12th, and they indicate agreement
16 on all topic areas.

17 And that the evidence and testimony will
18 be submitted in the form of declarations at the
19 Evidentiary Hearing.

20 Mr. Carroll is that correct?

21 MR. CARROLL: That is correct.

22 HEARING OFFICER RENAUD: And Ms. Willis,
23 is that correct?

24 MS. WILLIS: That is correct.

25 We also received comments on the Final

1 Staff Assessment from the applicant so at some
2 point in time we wish to go over those. They are
3 minor, I think relatively minor issues.

4 HEARING OFFICER RENAUD: Very good.
5 And, in fact, that's the next thing we'll turn to.

6 On November 11, 2009 applicant through
7 counsel submitted comments on the FSA, that's the
8 Final Staff Assessment.

9 It reflects a careful reading of that
10 rather large document. And it is quite helpful in
11 providing a number of areas that may need
12 correcting or clarifying.

13 And I -- this was docketed, by the way,
14 on November 11th as well so it is in the public
15 record.

16 I believe all of us up here at the table
17 have a copy of that.

18 And I propose that we just proceed
19 through that. And I'll just ask the parties where
20 we stand with these issues.

21 All right. The first item is under the
22 term, under the title, Executive Summary. And it
23 references an inaccuracy with respect to water.

24 And let me ask, I think, first of
25 Ms. Willis. Is the staff in agreement that that

1 needs to be corrected as indicated?

2 MS. WILLIS: Yes.

3 HEARING OFFICER RENAUD: All right. The
4 second item under Executive Summary is the --
5 concerns the expected commercial operation date.
6 And I believe this is telling us that that's
7 expected to be June 2012 but there is someplace
8 else in the FSA an indication that it's 2013. So
9 will that be corrected to 2012?

10 MS. WILLIS: We have made that change,
11 yes.

12 HEARING OFFICER RENAUD: Thank you,
13 good. All right.

14 Let's move on to Air Quality. This
15 indicates that on page 4.1-40 there's simply a
16 word or, I guess, a word or the end of a sentence
17 missing in the electronic version that's presently
18 in the paper copy. So that can be corrected I
19 take it.

20 MS. WILLIS: We'll take care of that.

21 HEARING OFFICER RENAUD: Thank you. All
22 right.

23 Biological Resources. The comments
24 indicate that the construction and lay down
25 parking area should be 12.3 acres rather than 15.5

1 acres.

2 MS. WILLIS: And we're fine with that.

3 HEARING OFFICER RENAUD: Thank you. And
4 also under Biological Resources GWF is pointing
5 out that there's a reference to a natural gas
6 stack which would be more correctly referred to as
7 the natural gas-fired auxiliary boiler exhaust
8 stack.

9 MS. WILLIS: Yes.

10 HEARING OFFICER RENAUD: In agreement?

11 MS. WILLIS: We have noted that change.

12 HEARING OFFICER RENAUD: Thank you.

13 Also under Biological in Condition Bio-
14 9, the verification references reconductoring.
15 And the applicant is requesting that we strike the
16 reference to reconductoring as this work will be
17 performed by PG&E.

18 MS. WILLIS: Yes, we agree with that.

19 HEARING OFFICER RENAUD: Very good.

20 Under Cultural Resources there is a comment that
21 the reconductored segment three lines referred to
22 as 2.5 miles long and that it should be 1.6.

23 MS. WILLIS: That's correct.

24 HEARING OFFICER RENAUD: Good. Also a
25 comment that the proposed project did not include

1 any offsite linear facilities and therefore a
2 reference in Condition CUL-6 to linear facility
3 routes should be deleted.

4 MS. WILLIS: And we've agreed to delete
5 that portion.

6 HEARING OFFICER RENAUD: Thank you.
7 Moving on. Within Cultural, another issue on
8 Cultural 6 involves a, imposing a prescriptive
9 monitoring approach to the project site when it
10 has already undergone significant subsurface
11 disturbance.

12 And I see you have distributed,
13 Ms. Willis a --

14 MS. WILLIS: Actually that --

15 HEARING OFFICER RENAUD: -- oh, that's
16 on Soil. I'm sorry.

17 MS. WILLIS: Right.

18 HEARING OFFICER RENAUD: Okay, let's
19 forget that for now. The applicant has proposed
20 some different language for that condition. How
21 does the staff feel about that?

22 MS. WILLIS: Staff is actually not
23 willing to accept the changes on this condition.
24 They prefer to keep the wording as is.

25 HEARING OFFICER RENAUD: Mr. -- what's

1 your name again?

2 MR. CARROLL: Carroll.

3 HEARING OFFICER RENAUD: Mr. Carroll,
4 thank you (laughter).

5 MR. CARROLL: Applicant continues to
6 believe that the proposed level of monitoring is
7 excessive given that this is a site that's already
8 developed.

9 However in the interest of conserving
10 resources of the Committee and keeping this
11 process moving forward and in appreciation of all
12 the good work that staff has done on this project
13 we're willing to concede on this point and accept
14 the condition as proposed.

15 HEARING OFFICER RENAUD: Very well,
16 thank you. Let's move on to Public Health then.
17 The comment is that there is a reference to one
18 turbine generator on the project when, in fact,
19 there are two.

20 MS. WILLIS: That's correct.

21 HEARING OFFICER RENAUD: I'll correct
22 that line. Soil and Water. The first comment is
23 referencing a numerical difference on the percent
24 reduction of water for municipal and industrial
25 use. It should be 60 percent rather than at 40

1 percent.

2 MS. WILLIS: And we've noted that
3 change.

4 HEARING OFFICER RENAUD: Good. And next
5 on Soil and Water is a request that Condition Soil
6 and Water-5 be deleted. And I believe this is
7 what you have submitted a revised condition?

8 MS. WILLIS: That's correct.

9 HEARING OFFICER RENAUD: All right. We
10 have that in front of us. Has the applicant
11 reviewed this?

12 MR. CARROLL: Yes we have and that
13 revised condition is acceptable to the applicant.

14 HEARING OFFICER RENAUD: Very well.
15 We'll substitute that into the decision -- into
16 the conditions for this topic, thank you.

17 Okay next is, under Transmission Line
18 Safety and Nuisance. Apparently there's a
19 reference to the Tesla Substation that should be
20 a reference to the Kasson Substation.

21 MS. WILLIS: And we agree with that
22 change.

23 HEARING OFFICER RENAUD: Good. Next is
24 on Visual Resources. There are references to
25 conversion of four acres of land and actually the

1 conversion according to applicant is 3.28.

2 MS. WILLIS: Yes, 3.28 is the correct
3 acreage.

4 HEARING OFFICER RENAUD: Thank you.
5 Also under Visual there is apparently a reference
6 to two 45 foot tall transmission structures when,
7 in fact, there are six.

8 MS. WILLIS: Correct.

9 HEARING OFFICER RENAUD: We'll change
10 that. And also under Visual there is a
11 reconductoring of 2.3 miles of one line and 8.9
12 miles of another line. And the applicant is
13 indicating that the 8.9 mile reconductoring will
14 no longer be required and asks that the reference
15 to the, to that line be removed. I think I got
16 that right.

17 Did I state it, maybe one of you can
18 state it more accurately than I did.

19 MR. CARROLL: That is correct.

20 HEARING OFFICER RENAUD: All right. So
21 as requested in this comment the change will be
22 made?

23 MS. WILLIS: That is correct.

24 HEARING OFFICER RENAUD: Very good. All
25 right. Also under Visual the applicant is

1 proposing a change to the Condition of
2 Certification Vis-4 which relates to landscaping.
3 Some revised language is proposed. What does the
4 staff feel about that?

5 MS. WILLIS: We're willing to accept the
6 revised language. I believe that the purpose is
7 that some of the previous plantings did not work.
8 They weren't successful. Is that correct?

9 MR. SOLOMON: That's correct.

10 MS. WILLIS: Yeah. So we're willing to
11 just make the changes as requested.

12 HEARING OFFICER RENAUD: Very well,
13 thank you. And final comment also on Visual
14 pertaining to Condition Visual-5G. It appears to
15 be the same issue on referring to a natural gas
16 stack when it really has a longer name.

17 MS. WILLIS: That's correct.

18 HEARING OFFICER RENAUD: We'll change
19 that, all right. And are there any further
20 comments other than what's shown in this letter?

21 MR. CARROLL: No, there are not.

22 HEARING OFFICER RENAUD: All right.

23 Thank you. Let's see. Okay.

24 The Committee, well let me ask first.

25 Ms. Read are there any other persons on the phone?

1 MS. READ: Operator, any other callers
2 on the line? No, just Mr. Swaney.

3 HEARING OFFICER RENAUD: All right. And
4 Mr. Swaney we'll get to you not too long from now.
5 Thanks for your patience.

6 Okay. The Committee has reviewed the
7 Final Staff Assessment and has a few questions.
8 And I'll start out with a couple of them and then
9 raise the largest topic in there.

10 In the Traffic Section, let's see, there
11 it is, page 4.10-14 is referring to Operation
12 Impacts and Mitigations on traffic in the area of
13 the project. And it references 11 delivery truck
14 trips per month.

15 I usually would see here also a
16 reference to employee-related traffic and I don't
17 see that. Maybe I'm overlooking it but for the
18 completion of the record we should have in the
19 record the amount of employee-related traffic.

20 Perhaps Mr. Solomon can speak to that.

21 I found elsewhere in Socioeconomics it
22 looks like you're going to have, there's going to
23 be 17 employees.

24 Anyway I just wanted to indicate this
25 was a question the Committee had. If the topic

1 needs to be supplemented, that should be done
2 before the Evidentiary Hearing.

3 MS. WILLIS: We'll take note of that and
4 perhaps issue a supplemental staff assessment if
5 it's not readily available.

6 MR. SOLOMON: I don't have an answer for
7 you right now so a supplement would address that.

8 HEARING OFFICER RENAUD: Good. Just so
9 you have in mind that we need that information to
10 make a determination as to operation and impacts
11 of traffic.

12 MS. WILLIS: Okay. Thank you.

13 HEARING OFFICER RENAUD: All right. And
14 the other area of question and concern the
15 Committee had pertains to the greenhouse gas
16 analysis.

17 I don't know if Chair Douglas would like
18 to speak to this at all; I can introduce the
19 topic. I think the concern was triggered by
20 staff's statement at page 4.1-97 that the Tracy
21 Project could meet the current emission
22 performance standard in SB 1368.

23 Could, sounds equivocal. And we
24 actually need more definite testimony than, could.
25 We would need, would, or could not.

1 PRESIDING MEMBER DOUGLAS: Well I'm
2 looking to see if staff has a comment on that. If
3 not, we will wait to hear about that in the
4 future.

5 MS. WILLIS: We're going to, staff will
6 ask Matt Layton to address that issue.

7 MR. LAYTON: Good afternoon. My name is
8 Matthew Layton, L-A-Y-T-O-N. I actually made that
9 change because we're not making a finding about
10 1368 in this particular document. The finding
11 would be made at a later time.

12 It could if it was required to meet the
13 standard, meet the standard. However we're not
14 making the determination in this document. So we
15 did use that word very carefully.

16 HEARING OFFICER RENAUD: Would it be
17 possible to include a condition of certification
18 if there isn't one already requiring that it meet
19 that standard?

20 MR. LAYTON: Again, the utility actually
21 has to make or ask that determination be made
22 about 1368, whether or not it does meet the
23 emission performance standard. So I'm not sure a
24 condition would help.

25 HEARING OFFICER RENAUD: All right. The

1 applicant care to address this?

2 MR. CARROLL: I think we do understand
3 the distinction that the staff is making. We
4 believe that the project will meet the 1368
5 standard.

6 And if I understand staff correctly they
7 agree with that but their wording is based on the
8 fact that that is not a determination that the CEC
9 makes. I understand that their review is that
10 that's a determination that would be made by the
11 CPUC.

12 HEARING OFFICER RENAUD: I think the
13 concern we have then is that we can only base the
14 decision on the evidence in the record. And so if
15 all we have is, could meet, that can't form the
16 basis of a decision one way or another on that
17 question.

18 Will there be evidence put into the
19 record by somebody, if it's not already there,
20 that upon which a finding about this could be
21 based on?

22 MR. CARROLL: Yes.

23 MR. LAYTON: Well there is evidence in
24 the record that shows that the performance of this
25 particular unit is 0.474, which is well below 0.5.

1 One could extrapolate from that that it
2 does, in fact, meet the standard. However, the
3 staff is not making a recommendation, can't make a
4 recommendation on 1368 because that's not our job
5 at this point.

6 HEARING OFFICER RENAUD: All right.

7 MR. LAYTON: It has to be made by either
8 the CEC when the utility comes in, if it's a Muni,
9 or at the PUC if it's a IOU.

10 HEARING OFFICER RENAUD: So you're
11 saying it would be possible for it to meet the
12 standard. You're not saying that you don't know.
13 You're just saying that it would be possible if
14 operated under certain conditions.

15 MR. LAYTON: Correct.

16 HEARING OFFICER RENAUD: All right.

17 PRESIDING MEMBER DOUGLAS: I have a
18 follow-up question about the efficiency of the
19 plant. Why is it not more efficient? We've seen
20 other combined-cycle proposals come before us with
21 better efficiency than this proposed plant would
22 have.

23 MR. BIRDSALL: I'll start with that.
24 I'm Brewster Birdsall. I prepared the air quality
25 and the greenhouse gas analysis with Matt Layton

1 as a co-author.

2 And to take a stab, and I think that I'd
3 like to turn it to the applicant as well. The
4 existing plant is made up of two older combustion
5 turbines. And the turbines are E class turbines.
6 They are stationary gas turbines that are in
7 simple cycle mode right now.

8 The combined cycle project would be a
9 modification of those older turbines. So the
10 project is not starting off with a brand new set
11 of combustion turbines.

12 And so just from that point of view it
13 has a little bit of a disadvantage compared to a
14 brand new greenfield facility.

15 And then as you can see from the
16 information that we put in the greenhouse gas
17 section, it would be able to comply with a .5
18 target set by the CPUC rulemaking and the
19 emissions performance standard.

20 Which means, which is equivalent of
21 combined cycle facilities. So this project does
22 meet that target for a combined cycle. It's not
23 the best brand new combined cycle because it's
24 just not involving the newest combustion turbines.

25 Now I'm sure that GWF might have

1 something to add there.

2 HEARING OFFICER RENAUD: Yes, please go
3 ahead if you do, and state your name.

4 MR. WHEELER: Doug Wheeler with GWF. In
5 reviewing the FSA I think one thing that we wanted
6 to point out, the staff looked at what we included
7 in the application as the worst case, which was a
8 15 degree case, duct fired.

9 If you look at it at ISO conditions or
10 the average temperature case, approximately 60
11 degrees, the efficiency or the factor drops to
12 .436.

13 The other thing that the application
14 does, and which the staff correctly noted, is the
15 application looked at non-duct fired hours and
16 duct-fired hours. And on the duct-fired hour case
17 it's 3100 hours.

18 The reason that we put the application
19 together in that fashion was to give the counter-
20 party and a PPA the maximum flexibility with
21 respect to how the unit operates.

22 Do we think that it's going to operate
23 3100 duct-fired hours? Probably not. But it does
24 give the counter-party that flexibility.

25 When you look at the non-duct fired heat

1 rate, as an example, it's approximately 7800.
2 That's contrasted with, I think it's figure 4, in
3 the greenhouse gas section where it's reflected at
4 8,056.

5 So we wanted to point that out. That
6 the way the analysis was done by the staff, which
7 is a weighted average of duct-fired and non-duct-
8 fired hours, and then to point out that it was at
9 a worst temperature operating case.

10 PRESIDING MEMBER DOUGLAS: Thank you.

11 I have one more question. And then I'll
12 turn the mic back to the Hearing Officer if I
13 don't come up with yet another question.

14 I'm looking at Greenhouse Gas Table 4
15 and there's a list of plants in the local area and
16 their relative efficiencies. And it seems
17 plausible looking at this list that, for the most
18 part, the modified, the GWF Tracy plant would,
19 most likely, displace less efficient plants.

20 Although there are some plants in the
21 local area that would be more efficient. And it's
22 not clear to me from looking at this chart how
23 much weight we should put on thinking about the
24 plants that are in the vicinity versus
25 displacement more broadly in the system.

1 And I'm not particularly interested in
2 precise calculations of what exactly would be
3 displaced because I don't think that's necessary
4 for us in our analysis. But I am interested in
5 some more information that would enable us to
6 interpret the significance of this table.

7 MR. LAYTON: Commissioner, Chairman, I
8 think Table 8 might be more important where it
9 talks about how this particular gas-fired unit
10 might fit into the system.

11 PRESIDING MEMBER DOUGLAS: Okay.

12 MR. LAYTON: But I think I agree with
13 you that identifying a particular unit wouldn't
14 really be helpful. It's kind of the function of
15 these units. And, again, the function varies from
16 day to day, year to year, season to season.

17 So I think Table 8 might be more useful
18 to the Committee in preparing their analysis or
19 drawing their conclusions.

20 PRESIDING MEMBER DOUGLAS: Thank you.

21 HEARING OFFICER RENAUD: Okay. Thank
22 you. Well I think maybe just through these
23 questions the Committee has indicated its interest
24 and concern in this very important topic.

25 And if the parties upon review of their

1 evidence and declarations can see any way to
2 increase the amount of information, bolster it,
3 whatever, that would be encouraged so that it will
4 assist the Committee in being able to make
5 findings that are really supported by the
6 evidence. And if you do that you should send
7 those in as quickly as you can, docket them and
8 exchange them with the parties and we'll get those
9 into the record.

10 Another question that came up. And I
11 think Mr. Swaney if you, I hope you can hear us.
12 This is probably something or maybe something
13 you'll want to weigh in on because it involves the
14 District.

15 The plant that is there now is a peaker,
16 operated as a peaker.

17 And it was licensed by this Commission
18 to operate for 8,000 hours a year as I understand
19 it, but it's been running less than 100 hours a
20 year.

21 And the staff analysis and the Final
22 Determination of Compliance from the District
23 assumed that the baseline is 8,000 hours and that
24 therefore the ERCs that were surrendered in 2000
25 are still valid, can still be used. And that's,

1 in fact, how this was all worked out.

2 I think the latest, maybe the latest
3 view of the courts on this is that if the
4 existing, permitted amount was reviewed and
5 received environmental review then that would be
6 considered the baseline.

7 But there have been differing views on
8 that as well.

9 And I wonder first does any party wish
10 to comment on that. And second, we should perhaps
11 talk about whether this would be a briefing topic
12 in connection with these hearings.

13 Does anybody wish to speak up, including
14 Mr. Swaney. That or anybody else related to air
15 quality.

16 Don't all speak at once.

17 Let me ask the lady in the back to
18 identify herself.

19 MS. ELISSAGARAY: Thank you.

20 HEARING OFFICER RENAUD: I think I know
21 who you are.

22 MS. ELISSAGARAY: Thank you.

23 HEARING OFFICER RENAUD: Because you
24 phoned me.

25 MS. ELISSAGARAY: Yes.

1 HEARING OFFICER RENAUD: Are you --

2 MS. ELISSAGARAY: Annette Elissagaray.

3 HEARING OFFICER RENAUD: All right. And
4 you are an intervenor in this case --

5 MS. ELISSAGARAY: Correct, I am.

6 HEARING OFFICER RENAUD: All right. Do
7 you wish to address the point that we just raised?

8 MS. ELISSAGARAY: Regarding air quality?

9 HEARING OFFICER RENAUD: Yes.

10 MS. ELISSAGARAY: Well I would like to
11 ask a question and make a comment at the same
12 time.

13 HEARING OFFICER RENAUD: About that
14 topic. Because if it's something else we'll get
15 to that.

16 MS. ELISSAGARAY: About air quality?

17 HEARING OFFICER RENAUD: Yes.

18 MS. ELISSAGARAY: Thank you. A few
19 months ago, it was probably last February or so
20 when we had a meeting in Tracy, there was a
21 comment made. I asked a question if the air
22 quality from this plant was going to be better or
23 worse.

24 And I believe that Brewster was
25 answering the question that day. And he said, the

1 air quality would be worse coming off of this
2 plant.

3 And I'm sure that most of you know that
4 my family owns 275 plus acres adjacent to where
5 this plant is located. We have four custom homes
6 that are there. My family members live in them.
7 And we are concerned about our air quality.

8 And a comment was made that they thought
9 that possibly air monitoring stations would be
10 installed to monitor the air.

11 You just made a comment that the peaker
12 plant runs approximately 100 hours a year. I
13 guess we don't have too big of a problem with the
14 air quality that's coming out of there right now.

15 But we do have a problem, a potential
16 problem for the air quality that's going to be
17 coming out of this new proposed plant. And we do
18 live there. We work there every day. And I don't
19 believe that the air monitoring stations have been
20 installed on our property to monitor that air.

21 It's just a comment I wanted to make
22 today, thank you.

23 HEARING OFFICER RENAUD: Thank you. All
24 right.

25 Mr. Swaney, did you wish to speak on

1 this topic?

2 MS. READ: They're opening his line
3 right now.

4 HEARING OFFICER RENAUD: All right,
5 thank you. We're waiting for Mr. Swaney's phone
6 line to be opened. Just go ahead and begin when
7 your line is open, Mr. Swaney.

8 MR. SWANEY: Okay, is it open now?

9 HEARING OFFICER RENAUD: Yes.

10 MR. SWANEY: Okay.

11 HEARING OFFICER RENAUD: Please identify
12 yourself for the record and then proceed.

13 MR. SWANEY: This is Jim Swaney, S-W-A-
14 N-E-Y. I'm a permitting manager with the San
15 Joaquin Valley Air Pollution Control District.

16 The main reason for me calling in today
17 was to see how the proceedings were going, to
18 determine if anybody from the district should be
19 attending the evidentiary hearing.

20 But regarding the emission reduction
21 credits. As outlined in the Final Determination
22 of Compliance, any credit that was used for any
23 potential emissions that were permitted at the
24 time where those potential emissions still are
25 occurring, those credits remain valid for use for

1 this project. And so from that standpoint we
2 don't feel that there is any need to have any
3 hearing on that issue.

4 HEARING OFFICER RENAUD: All right,
5 thank you, Mr. Swaney.

6 And I should add that yes, we do want to
7 have a representative of the district available at
8 the evidentiary hearing. You don't need to be
9 present in person but actually our regulations
10 require that someone be available at that hearing.
11 So thank you for asking.

12 Mr. Carroll.

13 MR. CARROLL: Yes. From the applicant's
14 perspective we agree that there is no need to
15 conduct evidentiary hearings or briefing on this
16 point. As was indicated, we think that the
17 existing law, the California Environmental Quality
18 Act is very clear that the baseline for purposes
19 of analysis is the project as permitted. Since
20 obviously the project did go through a CEQA
21 analysis when it was initially permitted we
22 believe that CEQA requirements have been met.

23 And we also would like to point out that
24 the air district's regulations are very specific
25 as to the methodology that was used to evaluate

1 the offset package for this project and that the
2 offset package as proposed complies to the letter
3 with the air district's regulations as approved
4 into the state implementation plan.

5 So we believe that it is very clear
6 based on the evidence that has been proposed to be
7 entered into the record by the applicant, the air
8 district and the CEC staff, that the offset
9 package complies both with the California
10 Environmental Quality Act and all other applicable
11 LORS.

12 HEARING OFFICER RENAUD: Okay, thank
13 you. And I trust you're confident that the
14 evidence will show that at the hearing.

15 MR. CARROLL: Yes we are.

16 HEARING OFFICER RENAUD: All right. Any
17 comment from the staff? Counsel or anybody else?

18 MR. BIRDSALL: I think what I would like
19 to add from the staff point of view is that the
20 setting portion of the Final Staff Assessment
21 shows in pretty clear detail how the existing GWF
22 plant was offset through a set of emission
23 reduction credits that essentially lay the
24 groundwork for the proposed project.

25 So from a CEQA perspective I think this

1 case is a little bit unique because we are
2 essentially starting with a project that included
3 its mitigation up front so the baseline has this
4 condition of emission reductions surrendered.

5 The district analysis in the FDOC as
6 well as my analysis goes on in its impact
7 assessment to show and represent those original
8 offsets as providing the framework for the
9 mitigation for the current plant.

10 I'm available to answer more detailed
11 questions but that's the, that's the basic
12 structure here.

13 HEARING OFFICER RENAUD: All right,
14 thank you very much, that was all very helpful
15 information, we appreciate that.

16 Let's ask now if there are any other
17 intervenors present, either here or on the phone?

18 No? Seeing none.

19 MS. READ: There's no one on the line.

20 HEARING OFFICER RENAUD: All right,
21 thank you.

22 As we always do at these hearings we
23 open the floor to public comment. I believe we'll
24 ask Ms. -- I'm sorry if I mispronounce your name,
25 Elissagaray.

1 MS. ELISSAGARAY: Very good.

2 HEARING OFFICER RENAUD: All right. If
3 you have anything else you wish to tell us before
4 we ask other members of the public to comment.

5 MS. ELISSAGARAY: Thank you very much.

6 Receiving the packet -- I was out of
7 town and then suffered a little bit of a leg
8 injury so I was sorry that I did not have my eyes
9 on this packet until just a few days ago.

10 But as thumbing through it, and of
11 course there's probably 300 pages to thumb
12 through, I did realize that on Visual Resource
13 figure 9 where it was indicating where the home
14 that I refer to in my talks are located, the
15 diagram is incorrect. It is showing that we have
16 two of the Tusso residents on Lammers Road,
17 approximately .87 miles from the plant, and it is
18 showing two other residences quite a ways down.
19 I'm not quite sure what those other residences
20 are.

21 I do personally live about five and a
22 half miles from the plant but I still own a home
23 there and I rent it to tenants, and my parents'
24 home is still right here on Lammers Road. And so
25 I was really surprised. GWF representatives have

1 been to all of these homes over the years. They
2 are very well aware of where our family's homes
3 are located.

4 So I think my comment is, in looking at
5 this figure briefly, realizing it had a gross
6 error, I'm wondering what else is grossly in error
7 in this packet. I'm not one to accuse people of
8 trying to mislead. I certainly am not one of
9 those people. But we own four homes here on this
10 property that is adjacent to this land that is
11 adjacent to the GWF property. And I take -- I am
12 very offended that they grossly represented our
13 homes. So I hope that that can be corrected.

14 HEARING OFFICER RENAUD: May I address
15 that first and then we can move on?

16 MS. ELISSAGARAY: Yes, thank you.

17 HEARING OFFICER RENAUD: All right,
18 thank you. Let me ask staff if the figure, Visual
19 Resources Figure 9 is different than it was in the
20 PSA? I don't know if there is someone here who
21 can answer that. I would be surprised if it is
22 different.

23 MS. WILLIS: The staff is asking Marie
24 McLean, who drafted the Visual Resource section,
25 to address that issue.

1 MS. McLEAN: It's the same figure.

2 HEARING OFFICER RENAUD: Please identify
3 yourself.

4 MS. McLEAN: My name is Marie McLean and
5 I did the visual analysis for Tracy. And it's the
6 same figure that was in the PSA.

7 HEARING OFFICER RENAUD: All right,
8 okay. Well, Ms. Elissagaray, I have to point out
9 that, I have to point out that you did submit
10 comments on the Preliminary Staff Assessment; they
11 are shown in the FSA at page 4.12-20. And I don't
12 see that you mentioned a problem with that figure.
13 Perhaps you did but I don't see that you did.

14 MS. ELISSAGARAY: Well I'm sorry if I
15 didn't. But I'm certainly aware of it now and
16 they are incorrect.

17 HEARING OFFICER RENAUD: All right.
18 What is incorrect about it specifically? I'm
19 looking at it now so you can tell us.

20 MS. ELISSAGARAY: The Tusso residence
21 that shows 3.77 miles from the plant.

22 HEARING OFFICER RENAUD: Yes.

23 MS. ELISSAGARAY: I am not quite sure
24 what that is or whose home that is. And the one
25 that is Elissagaray residence 5.8 miles, if that's

1 my house, I'll say that it is. That those are not
2 the homes that I refer to when I talk about the
3 four custom homes along Lammers Road. Those
4 addresses are 27369 South Lammers, 27237 South
5 Lammers, 27249 South Lammers and 27210 South
6 Lammers. Those are the four homes that we own
7 along Lammers Road. They are all within this .87
8 to .86 miles from the plant.

9 HEARING OFFICER RENAUD: Now that same
10 page of the Visual Resources section of the FSA
11 says the Tuso properties located on South Lammers
12 Road were taken into account in Key Observation
13 Point-1. Are those the homes to which you are
14 referring?

15 MS. ELISSAGARAY: I'm sorry?

16 HEARING OFFICER RENAUD: Well, we have
17 photographs in the analysis that are taken from
18 what are called key observation points, KOPs.

19 MS. ELISSAGARAY: Okay.

20 HEARING OFFICER RENAUD: And according
21 to this, Tuso properties located on South Lammers
22 Road were taken into account in the photographs
23 from KOP-1. Are those the home that you are
24 talking about? That's my question. I'm just
25 trying to clarify.

1 MS. ELISSAGARAY: Well, I'm looking at
2 this visual right here and I'm not quite sure
3 where the house at 3.77 miles, I don't know whose
4 home that is that they're referring to, I don't
5 know. I don't know of any Tusso that lives there.
6 It certainly isn't my brothers or myself.

7 HEARING OFFICER RENAUD: Perhaps the
8 staff witness can help us out here. I don't mean
9 to put you on the spot but could you -- you're
10 just hearing this for the first time. This is the
11 sort of thing we would like to see in prehearing
12 conference statements so that everybody can be
13 ready. You can see how it makes it kind of
14 awkward when we aren't able to have had advance
15 warning.

16 MS. ELISSAGARAY: Yes, thank you.

17 HEARING OFFICER RENAUD: All right.

18 MS. McLEAN: I'd have to check upstairs
19 to see actually where I got the address. I know
20 we made phone calls and actually did research to
21 determine the addresses of the home. But as you
22 point out, if her concern is that her houses are
23 located in the area that we indicated closest to
24 the power plant, we did then, as you point out,
25 take her houses into consideration when we did the

1 analysis.

2 HEARING OFFICER RENAUD: All right,
3 thank you. Just one point of clarification,
4 Ms. Elissagaray. Could you -- if you're looking
5 at this map.

6 MS. ELISSAGARAY: Yes sir.

7 HEARING OFFICER RENAUD: Do you see
8 KOP-1 near the top?

9 MS. ELISSAGARAY: Yes.

10 HEARING OFFICER RENAUD: Are any of the
11 homes you're talking about near there?

12 MS. ELISSAGARAY: No, not KOP-1.

13 HEARING OFFICER RENAUD: What are they
14 near to on this map? Give us a landmark.

15 MS. ELISSAGARAY: Well they are kind of
16 in-between KOP-1 and KOP-2.

17 HEARING OFFICER RENAUD: All right. Are
18 they where it says, Tusso residence and there are
19 two orange dots?

20 MS. ELISSAGARAY: Correct. There's two
21 homes there and then there are also two more homes
22 right there.

23 HEARING OFFICER RENAUD: In the same --
24 so instead of two dots we should have four,
25 basically.

1 MS. ELISSAGARAY: Four dots there.

2 HEARING OFFICER RENAUD: All right.

3 MS. ELISSAGARAY: Correct.

4 HEARING OFFICER RENAUD: But the
5 distances are correct roughly?

6 MS. ELISSAGARAY: Yes, I believe so.

7 HEARING OFFICER RENAUD: Okay, thank
8 you.

9 MS. ELISSAGARAY: Yes, thank you. And
10 also the map, it just shows the dots of the homes
11 but it doesn't show the property that we own.
12 Thank you.

13 HEARING OFFICER RENAUD: Thank you. Did
14 you wish to comment on any other areas in the
15 Final Staff Analysis?

16 MS. ELISSAGARAY: Just that the property
17 is adjacent and it's 276-plus acres adjacent to
18 this power plant.

19 HEARING OFFICER RENAUD: All right,
20 thank you.

21 MS. ELISSAGARAY: Thank you.

22 HEARING OFFICER RENAUD: All right.

23 All right, we'll take comment from
24 members of the public at this point. If you wish
25 to speak simply feel free to come up to the

1 microphone, state your name and who you represent
2 and go ahead.

3 No one? All right.

4 One more time I'll check for people on
5 the phone.

6 MS. READ: No.

7 HEARING OFFICER RENAUD: No one, all
8 right. Okay.

9 Well, is there any further comment or
10 question on behalf of the Committee?

11 No? All right.

12 The Committee will take everything that
13 was said today into account. We'll issue a
14 evidentiary hearing order which will provide final
15 instructions for preparing for the evidentiary
16 hearing. We will assume that November 30 is still
17 when it will take place, as noticed, in Tracy.

18 MS. WILLIS: Will you also include the
19 staff you would like to have present at the
20 hearing or do you have an idea now so that we can
21 make sure their schedules are open for that?

22 HEARING OFFICER RENAUD: Well as
23 indicated, we always need a representative of the
24 air district. I would say that your air quality
25 staff and possibly visual would be good just based

1 on the questions that have been asked today. I
2 can't anticipate anyone else but I'll leave that
3 to your discretion. Having people available on
4 the phone is always useful in case something comes
5 up we can at least reach them by telephone.

6 MS. WILLIS: Okay, thank you.

7 HEARING OFFICER RENAUD: All right. Any
8 closing remarks?

9 MR. CARROLL: Commissioner Renaud, I
10 don't know if it was your intention to talk about
11 the tentative exhibit list at all.

12 I did want to point out that in
13 applicant's exhibits, which were submitted today,
14 there are three additional exhibits, 96, 97 and
15 98, that were not identified in the prehearing
16 conference statement and therefore are not
17 reflected on your tentative exhibit list.

18 And obviously there may be additional
19 exhibits added. But I just wanted to point out
20 that there are three additional exhibits that were
21 submitted to you that do not appear on the
22 tentative list.

23 HEARING OFFICER RENAUD: So you're
24 talking about my exhibit list.

25 MR. CARROLL: Correct.

1 HEARING OFFICER RENAUD: Okay. We'll
2 correct that. But thank you for pointing that
3 out, that these were added since we prepared that.

4 I have nothing but compliments and
5 admiration for your exhibit lists. They are, as
6 usual, very nicely organized and very helpful to
7 the Committee in preparing for the hearings and in
8 preparing a decision. Thank you.

9 MR. CARROLL: Thank you.

10 HEARING OFFICER RENAUD: Hearing nothing
11 further we'll adjourn.

12 I see a hand in the back, all right.

13 MR. TUSO: Good afternoon, I'm Charles
14 Tusso, I'm Annette's brother. We're part of the
15 Tusso Family Intervenors here on this.

16 My comment is that I invite all of you
17 who are making the decision on our property out
18 there and this project to come and view our
19 perspective from our side of the fence, from our
20 homes. To see what we have to visually see every
21 day. You know, I think you'll get a whole
22 different perspective.

23 We were out at the plant back last
24 October, whenever it was when they had the first
25 meeting, and, you know, we were behind the fence

1 there and you look out and all you see was the
2 fence.

3 But from our house we see this big
4 monster in the background. I think it would give
5 you a whole different perspective of what we're up
6 against out there and we invite you to come out
7 and take a look from that angle.

8 So, you know, when we're over here in
9 Sacramento, 70-some miles away from the project,
10 it's kind of an abstract thing to be talking
11 about. But from over there it's the real deal.
12 We're over there living with this thing every day.

13 And, you know, you folks are making the
14 decision for us over there. Anyhow, we think
15 it's, you know, it's something that we have to
16 live with and I think it's real important to our
17 family. So we invite you to come out and take a
18 look.

19 HEARING OFFICER RENAUD: All right,
20 thank you for your comments.

21 Any other, any other comments? All
22 right, we are in adjournment then, thank you.

23 (Whereupon, at 2:55 p.m., the Prehearing
24 Conference was adjourned.)

25 --o0o--

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IN WITNESS WHEREOF, I have hereunto set
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